

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re:

WESTBOROUGH SPE LLC

Debtor

Chapter 7, No. 23-40709

**TRUSTEE’S OBJECTION TO: (i) MOTION OF LOLONYON AKOUETE FOR
INTERIM DISTRIBUTION (DOCKET #92); AND (ii) REQUEST FOR EXPEDITED
DETERMINATION – SUPPLEMENT TO MOTION FOR INTERIM
DISTRIBUTION (DOCKET #99)**

NOW comes JONATHAN R. GOLDSMITH, the duly appointed, qualified and acting Trustee (“Trustee”) in the above-captioned case, and hereby files this Objection to the Motion for Interim Distribution (Docket #92); and Request for Expedited Determination – Supplement to Motion for Interim Distribution (Docket #99) (collectively “Motion”). In support of this Objection, the Trustee represents that:

1. On August 31, 2023, an Involuntary Petition was filed against Westborough SPE LLC (“Debtor”) under the provisions of Chapter 7 of the Bankruptcy Code; subsequently, an Order for Relief was entered on October 11, 2023.
2. On October 12, 2023, JONATHAN R. GOLDSMITH accepted the appointment as Chapter 7 Trustee for the above-entitled estate.
3. The Motion that was filed by Lolonyon Akouete (“Akouete”) requests that this Court permit an interim distribution. This Motion should be denied for several reasons, a distribution is premature. The Trustee submits that upon his initial review of the proofs of claims filed to date, there are a few such claims that either lack sufficient documentation to support the particular claim or should be reduced or denied in toto. The Trustee will finalize his review of

the proofs of claims and file appropriate objections upon his addressing the more immediate issue, which is the dispute with the Town of Westborough regarding the tax foreclosure.

4. In support of the Motion, Akouete references the rights of a debtor pursuant to 11 U.S.C. Section 706(a) to convert a case from Chapter 7 to Chapter 11. The Trustee does not believe that this statement has any bearing on the underlying request for interim distribution to creditors. Nonetheless, the Trustee submits that 11 U.S.C. Section 706(a), permits a debtor to request conversion, but **not a creditor**. It appears that Akouete is filing this motion as a purported creditor and not on behalf of the Debtor. If the Motion could somehow be construed as being brought by the Debtor, the Trustee submits that it should be denied/stricken since under Massachusetts law, a LLC must be represented by an attorney in court proceedings. See In re: Dickey v. Inspectional Services Department of Bos., SJC-12613 (Mass. Apr. 11, 2019).

5. In addition to the foregoing, the Trustee notes that the rights of a debtor to convert a case from Chapter 7 to Chapter 11 can be denied by a Court based upon a finding of bad faith. See In re: Angera v. Lasserma (In re Angera), 634 B.R. 658, 660 (D.Mass 2021) (citing In re: Marrama, 313 B.R. 525, 531 (2004), affid Marrama v. Citizens Bank of MA., 549 U.S. 365 (2007)). In the instant case, bad faith can be found since it appears that Akouete and one Denise Edwards (“Edwards”) allege to have become managers of the Debtor somehow through the assignment granted to them from the prior manager, Babcock & Brown Parallel Member, LLC (“Babcock & Brown”). However, the individual that apparently acted on behalf of Babcock & Brown had no authority to do so which Akouete and Edwards knew or should have known. Accordingly, they do not have the authority to act on behalf of the Debtor. See the attached State of Delaware Certificate of Correction filed with the Delaware Secretary of State on February 15, 2024, on behalf of Babcock & Brown by Walter A. Horst, who is believed to be its Chief Financial Officer.

WHEREFORE, the Trustee requests the entry of the following Orders:

1. That the Motion for Interim Distribution (Docket #92) be denied;

2. That the Request for Expedited Determination – Supplement to Motion for Interim Distribution (Docket #99) be denied; and
3. For such other and further relief as is just and proper.

JONATHAN R. GOLDSMITH, TRUSTEE IN
BANKRUPTCY FOR WESTBOROUGH SPE
LLC

Dated: 2/26/24

By: /s/ Jonathan R. Goldsmith, Esq.
JONATHAN R. GOLDSMITH, ESQ.
(BBO No. 548285)
GOLDSMITH, KATZ & ARGENIO, P.C.
1350 Main Street, 15th Floor
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Tel: (413) 747-0700

Exhibit “A”

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF CORRECTION OF "BABCOCK & BROWN
PARALLEL MEMBER LLC", FILED IN THIS OFFICE ON THE FIFTEENTH DAY
OF FEBRUARY, A.D. 2024, AT 11:16 O'CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

4370415 8100
SR# 20240516277

Authentication: 202816178
Date: 02-15-24

You may verify this certificate online at corp.delaware.gov/authver.shtml

**State of Delaware
Certificate of Correction
of a Limited Liability Company
to be filed pursuant to Section 18-211(a)**

1. The name of the Limited Liability Company is: BABCOCK & BROWN PARALLEL MEMBER LLC.
2. That a Certificate of Correction was filed by the Secretary of State of Delaware on June 30, 2023, and that said Certificate requires correction as permitted by Section 18-211 of the Limited Liability Company Act.
3. The inaccuracy or defect of said Certificate is: (must give specific reason)

1. The Authorized Person who signed the June 30, 2023 Certificate of Correction ceased to be an officer of all affiliates of the Limited Liability Company as of October 1, 2007 and had no signing authority.

2. The June 30, 2023 Certificate of Correction was not authorized by the Limited Liability Company or its affiliates and was fraudulently filed.
4. The Certificate is hereby corrected to read as follows:

The Certificate of Correction is hereby rendered null and void, and that certain Certificate of Cancellation of Babcock & Brown Parallel Member LLC, filed with the Secretary of State of Delaware on March 15, 2019, is hereby in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the 13th day of February, A.D. 2024.

By: 

Authorized Person

Name: Walter A. Horst

Print or Type

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

)	
In re:)	Chapter 7, No. 23-40709
)	
WESTBOROUGH SPE LLC)	
)	
Debtor)	
)	

CERTIFICATE OF SERVICE

I, JONATHAN R. GOLDSMITH, ESQ., of GOLDSMITH, KATZ & ARGENIO, P.C., 1350 Main Street, 15th Floor, Springfield, MA 01103, do hereby certify that I served a copy of the within Response upon those parties listed on the attached Exhibit "A" by electronic mail or by mailing, first class mail, postage prepaid, on this 26th day of February, 2024:

/s/ Jonathan R. Goldsmith, Esq.
JONATHAN R. GOLDSMITH, ESQ.

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